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CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY ________ DEPUTY

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UNION PACIFIC RAILROAD CO.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff, v. UNION PACIFIC RAILROAD CO., and DOES 1-11, inclusive, Defendants.	Case No.: 07 CV 1707 W NLS **CONSENT DECREE**

..07-cv-01707-W-NLS Document 27 Filed 02/02/2009

Plaintiff U.S. Equal Employment Opportunity Commission (the "EEOC") and Defendants Union Pacific Railroad Co., and DOES 1-11, inclusive, hereby stipulate and agree to entry of this Consent Decree (the "Decree") to fully and finally resolve Plaintiff's complaint against Defendant in U.S. Equal Employment Opportunity Commission v. Defendants Union Pacific Railroad Co., and DOES 1-11, inclusive; Case No. 07 CV 1707 W NLS (the "Action"). On August 28, 2007, Plaintiff filed this Action in the United States District Court, Southern District of California, for violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e *et seq.* ("Title VII") and the Civil Rights Act of 1991. The Action alleges that Defendants discriminated against Charging Party Lucy Velazquez when it denied her an employment position because of her sex (female).

I.

PURPOSES AND SCOPE OF THE CONSENT DECREE

A. The Decree is made and entered into by and between the EEOC and Union Pacific Railroad Co. and shall be binding on and enforceable against Union Pacific Railroad Co., as well as its officers, directors, agents, successors and assigns ("Union Pacific" or "Defendant"). Collectively, the EEOC and Union Pacific are referred to herein as the "Parties."

B. The Parties have entered into this Decree for the following purposes:

1. To provide appropriate monetary and injunctive relief;
2. To ensure employment practices in compliance with federal law;
3. To ensure a work environment free from retaliation;
4. To ensure training of managers in employment discrimination law; and
5. To ensure dissemination of an employment discrimination policy reflective of federal law.

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II.

RELEASE OF CLAIMS

A. This Decree fully and completely resolves all issues, claims and allegations raised by the EEOC against Union Pacific in this Action.

B. Nothing in this Decree shall be construed to preclude the EEOC from bringing suit to enforce this Decree in the event that Union Pacific fails to perform the promises and representations contained herein.

C. Nothing in this Decree shall be construed to limit or reduce Union Pacific's obligation to comply fully with Title VII or any other federal employment statute.

D. This Decree in no way affects the EEOC's right to bring, process, investigate or litigate other charges that may be in existence or may later arise against Union Pacific in accordance with standard EEOC procedures.

III.

JURISDICTION

A. The Court has jurisdiction over the Parties and the subject matter of the Action.

B. The Action asserts claims that, if proven, would authorize the Court to grant the equitable relief set forth in this Decree.

C. The terms and provisions of this Decree are fair, reasonable and just.

D. This Decree conforms with the Federal Rules of Civil Procedure and Title VII and is not in derogation of the rights or privileges of any person.

E. The Court shall retain jurisdiction of this action during the duration of the Decree for the purposes of entering all orders, judgments and decrees that may be necessary to implement the relief provided herein.

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IV.

EFFECTIVE DATE AND DURATION OF DECREE

A. The provisions and agreements contained herein are effective immediately upon the date which this Decree is entered by the Court (the "Effective Date").

B. Except as otherwise provided herein, this Decree shall remain in effect for three (3) years after the Effective Date.

V.

MODIFICATION AND SEVERABILITY

A. This Decree constitutes the complete understanding of the Parties with respect to the matters contained herein. No waiver, modification or amendment of any provision of this Decree will be effective unless made in writing and signed by an authorized representative of each of the Parties.

B. If one or more provisions of the Decree are rendered unlawful or unenforceable, the Parties shall make good faith efforts to agree upon appropriate amendments to this Decree in order to effectuate the purposes of the Decree. In any event, the remaining provisions will remain in full force and effect unless the purposes of the Decree cannot, despite the Parties' best efforts, be achieved.

C. By mutual agreement of the Parties, this Decree may be amended or modified in the interests of justice and fairness in order to effectuate the provisions herein.

VI.

COMPLIANCE AND DISPUTE RESOLUTION

A. The Parties expressly agree that if the EEOC has reason to believe that Union Pacific fails to comply with any provision of this Consent Decree, the Commission may bring an action before this Court to enforce the Decree. Prior to initiating such action, the Commission will notify Union Pacific and/or its legal counsel of record, in writing, of the nature of the dispute. This notice shall specify the particular provision(s) that the Commission believes Union Pacific has breached. Absent a showing by either party that the delay will cause irreparable harm, Union Pacific shall have thirty (30) days to attempt to resolve or cure the breach.

B. The Parties agree to cooperate with each other and use their best efforts to resolve any dispute referenced in the EEOC notice.

C. After thirty (30) days have passed with no resolution or agreement to extend the time further, the Commission may petition this Court for resolution of the dispute, seeking all available relief, including an extension of the term of the Decree for such period of time as Union Pacific is shown to be in breach of the Decree, the Commission's costs and attorneys' fees incurred in securing compliance with the Decree, and/or any other relief the court deems appropriate.

VII.

MONETARY RELIEF

A. In settlement of this lawsuit, Union Pacific shall pay a total of $75,000.00 (seventy five thousand dollars and zero cents) to Charging Party Lucy Velazquez.

B. Union Pacific shall forward a check to Lucy Velazquez within fifteen (15) days of the Effective Date of this Decree and after Lucy Velazquez submits a completed form W9 to Union Pacific. Seventy five percent (75%) of the monies shall be designated as non-wage compensation under Title VII and no tax withholding shall be made. Twenty five percent (25%) of the monies shall be designated as lost wages; applicable railroad tax withholdings shall be made with Union Pacific paying any employer share. Union Pacific shall prepare and distribute 1099 tax reporting forms to Lucy Velazquez and shall make the appropriate reports to the Internal Revenue Service and other tax authorities. Within forty (40) business days of the issuance of the settlement check, Union

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Pacific shall submit to the Commission a statement verifying issuance of the settlement checks.

VIII.

VICTIM-SPECIFIC INJUNCTIVE RELIEF

A. Within thirty (30) days of the Effective Date of this Decree, Union Pacific shall proffer an agreement to the Brotherhood of Maintenance of Way Division of the International Brotherhood of Teamsters union to make Lucy Velazquez retroactive Group 26(a) seniority status backdated to February 10, 2005. Within forty (40) days of the Effective Date, Union Pacific shall submit to the Commission a statement verifying issuance of the proposed agreement. This Decree in no way affects Lucy Velazquez's ability to apply for any position or promotion and/or obtain any other seniority ranking.

IX.

GENERAL INJUNCTIVE RELIEF

A. Non-Discrimination

Union Pacific and its successors, as well as their officers, agents, management (including all supervisory employees), successors, assigns, and all those in active concert or participation with them, or any of them, hereby agree not to discriminate against persons on the basis of sex in hiring, job assignment, and any terms or conditions of employment.

B. Retaliation

Union Pacific, its officers, agents, management (including all supervisory employees), successors, assigns, and all those in active concert or participation with them, or any of them, hereby agree not to engage in, implement or permit any action, policy or practice with the purpose of retaliating against any current or former employee or applicant of Union Pacific because he or she has in the past or during the term of this Decree:

1. Opposed any practice made unlawful under Title VII;

2. Filed a charge of discrimination alleging such practice;
3. Participated in any manner in an internal or external investigation or proceeding relating to this case or any claim of a Title VII violation;
4. Was identified as a possible witness or claimant in this action;
5. Asserted any rights under this Decree; or
6. Sought and/or received any relief in accordance with this Decree.

X.

OTHER SPECIFIC INJUNCTIVE RELIEF

A. Policies and Procedures

Union Pacific shall review, revise (as necessary), distribute, and implement its policies and procedures against discrimination and retaliation prohibited by Title VII (the "Policy"). The Policy shall include:

1. A clear explanation of prohibited conduct;
2. Assurance that employees who make complaints of discrimination and/or harassment or who provide information related to such complaints are protected against retaliation; and
3. Assurance that Union Pacific will take prompt and appropriate corrective action when it determines that discrimination, harassment, and/or retaliation has occurred.

Within forty (40) days of the Effective Date of this Decree, Union Pacific shall provide to the EEOC a copy of the Policy. Union Pacific confirms that the Policy was disseminated to management employees in April 2008 and to union/agreement employees in June 2008 and that the Policy will be distributed to these employees during the same time frame in 2009.

For each new employee or manager hired after distribution of the Policy described above, Union Pacific shall ensure that the Policy is sent to the new employee and/or manager within thirty (30) days of employment.

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B. Training

1. During the term of this Decree, on an annual basis, Union Pacific shall provide interactive training of at least one hour duration to all Engineering Department track program managers whose work location is based in California. The training shall cover Union Pacific's Policy and federal laws regarding employment discrimination on the basis of sex. All persons required to attend such training shall verify their attendance in writing. For any person unable to attend the training, Union Pacific may train the person through video or other non-interactive means.

2. During the term of this Decree, on an annual basis, Union Pacific shall provide interactive training of at least one hour duration to all Engineering Department Union/Agreement Supervisors working in California. The training shall cover Union Pacific's Policy and federal laws regarding employment discrimination on the basis of sex. All persons required to attend such training shall verify their attendance in writing. For any person unable to attend the training, Union Pacific may train the person through video or other non-interactive means.

3. Within forty (40) days of the Effective Date, Union Pacific shall submit to the Commission a statement describing the intended content and the materials to be used in the first trainings under §§ X(B)(1) and (2) of this Decree.

C. Management

1. Within forty (40) days of the Effective Date of this Decree, Union Pacific shall submit to the Commission a letter verifying the allegations against Todd Stotts in connection with this case are notated in his EEO file.

2. Within forty (40) days of the Effective Date of this Decree, Union Pacific shall issue shall submit to the Commission a letter verifying the allegations against Karl Siemon in connection with this case are notated in his EEO file.

D. Record Keeping

Union Pacific confirms that it maintains a record-keeping procedure that provides for the centralized tracking of documents concerning right of selection assignments to open agreement positions. Union Pacific confirms that it maintains a record-keeping procedure that provides for the centralized tracking of documents concerning all complaints of sex discrimination, as well as the monitoring of such complaints to prevent sex discrimination. Union Pacific agrees to allow the EEOC to access these records during the term of this Decree. The documents retained shall be summarized in the annual reports set forth below.

For the duration of the Decree, other records to be maintained shall include:

1. All documents acknowledging a manager's electronic receipt of the Policy as required under this Decree;

2. All documents acknowledging mailing of the Policy to any employee as required under this Decree;

3. All documents verifying the occurrence of all training sessions and names and positions of all attendees for each session as required under this Decree; and

4. A document or spreadsheet summarizing any internal or external complaint or investigation of claims of failure to promote based on gender filed by any Engineering Department employee, including the names of the claimant, the names of the alleged perpetrator(s), a brief description of the nature of the alleged gender discrimination, and a brief description of how the complaint was investigated and/or resolved.

E. Reporting:

Union Pacific shall provide the following reports to the EEOC annually throughout the term of this Decree:

1. Confirmation that the training of all managers and agreement supervisors who are required under this Decree during the previous twelve months took place;

2. Confirmation that distribution of the Policy as required under this Decree took place; and

3. A document or spreadsheet summarizing any internal or external complaint or investigation of claims of failure to promote based on gender filed by any Engineering Department employee.

XI.

COSTS AND ATTORNEY'S FEES

A. Union Pacific shall bear all costs associated with its administration and implementation of its obligations under this Consent Decree.

B. Each party shall bear its own costs of suit and attorneys' fees.

XII.

MISCELLANEOUS PROVISIONS

A. During the term of this Consent Decree, Union Pacific shall provide any potential successor-in-interest with a copy of this Consent Decree within a reasonable time of not less than thirty (30) days prior to the execution of any agreement for acquisition or assumption of control of any or all of Union Pacific's facilities, or any other material change in corporate structure, and shall simultaneously inform the EEOC of same.

B. During the term of this Consent Decree, Union Pacific shall ensure that each of its officers, managers and supervisors is aware of any term(s) of this Decree that may be related to his/her job duties.

C. Unless otherwise stated, all notices, reports and correspondence required under this Decree shall be delivered to the attention of Anna Y. Park, Regional Attorney, U.S. Equal Employment Opportunity Commission, 255 East

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Temple Street, 4th Floor, Los Angeles, CA, 90012; facsimile number (213) 894-1301.

D. The Parties agree to entry of this Decree and judgment subject to final approval by the Court.

All Parties, through the undersigned, respectfully apply for and consent to the entry of this Consent Decree Order.

Respectfully submitted,

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Date: 01/20/2009

By: ______________________
Anna Y. Park
Attorneys for Plaintiff

OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.

Date: 2/2/2009

By: ______________________
Linda Claxton
Attorneys for Defendant

ORDER

GOOD CAUSE having been shown, the provisions of the foregoing Consent Decree are hereby approved and compliance with all provisions thereof is **HEREBY ORDERED.**

Date: 2/17/09

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The Honorable Thomas J. Whelan
United States District Court Judge